

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL DAVIS

Claimant

VS.

DODGE HOUSE, INC.

Respondent

AND

WAUSAU UNDERWRITERS INS. CO.

Insurance Carrier

Docket No. 210,011

ORDER

Respondent and its insurance carrier (respondent) requested review of the Post Award Medical decision by Special Administrative Law Judge (SALJ) Marvin Appling. The Board placed this appeal on its summary calendar for disposition without oral argument.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

This claim involves a post-award request for temporary total disability (ttd) benefits as well as further medical treatment. The SALJ denied claimant's request for ttd benefits as he found that no physician had opined that claimant was unable to work. The SALJ went on to order that Dr. Jason Stanton's bill be paid, at least up to the date of the Award, but he refused to authorize any further chiropractic treatment with Dr. Stanton. Instead, the SALJ ordered an independent medical examination to be conducted by Dr. Kris Lewonowski. The SALJ's order goes on to state that "[i]f Dr. Lewonowski [sic] thinks he [claimant] needs further treatment, this should be authorized by the Administrative Law Judge."¹

¹ ALJ Post Award Medical Order (Dec. 16, 2004) at 3.

The respondent requests review of whether claimant is entitled to post award medical treatment. Respondent contends that the original claim was settled with an agreed award on April 21, 1997, and that between 1996 and January 2004 claimant neither sought or requested medical treatment for any of the complaints he is presently asserting. Respondent does not argue that it should not have to pay Dr. Stanton's bill nor does Respondent take any issue over the SALJ's award of attorney's fees under K.S.A. 44-536.

Claimant argues respondent has presented no evidence documenting or establishing a subsequent "intervening" trauma or cause for his ongoing lower back, neck and left shoulder pain. Thus, claimant maintains the SALJ's post award order should be affirmed. Moreover, claimant's counsel requests he be awarded additional fees in association with this appeal to the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant met with accident on January 22, 1996, while on his way to work. Claimant was diagnosed with a lumbar strain as well as contusions to the right hand, left hip and left shoulder. A subsequent MRI showed degenerative changes at L4-5 and a herniated disc at L5-S1 to the left.

Claimant was evaluated by Dr. Edward Prostic in December 1996. At that point, claimant complained only of low back pain and had no radicular symptoms. Dr. Prostic assigned a 13 percent impairment to the body as a whole. The claim was settled in an agreed award based upon a 10 percent impairment to the whole body on April 21, 1997. Between late 1996 and January 2004, claimant neither sought medical treatment nor did he request medical treatment from respondent although he testified that his symptoms of pain and numbness in the back, left leg and left arm would come and go.

Then in January 2004 he was seen by Dr. Stanton, a chiropractor. Claimant indicated that he had been having recurring back pains. Dr. Stanton treated claimant's cervical and lumbar pain for a period of 4 months. Dr. Stanton has opined that, due to the natural result and progression of the claimant's original January 22, 1996 accident, claimant presently requires an orthopaedic evaluation and treatment.

In June 2004, Dr. Prostic evaluated claimant at respondent's request. Dr. Prostic found claimant was suffering from rotator cuff irritability and required additional treatment in the form of medication and therapy. However, he found there was no relationship between the original injury of January 22, 1996, and his present shoulder condition.

Workers who are injured in accidents arising out of and in the course of their employment are entitled to receive benefits under the Kansas Workers Compensation Act, including such medical treatment that may be reasonably necessary to cure and relieve the workers from the effects of their injuries. K.S.A. Furse 1993 44-510(a) provides:

(a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

And the injured workers' rights to receive medical benefits continue after an award for compensation has been entered. The statute that dictates the procedure to be used to make such a request, K.S.A. Furse 2000 44-510k, provides, in part:

(a) At any time after the entry of an award for compensation, the employee may make application for a hearing, . . . for the furnishing of medical treatment. . . The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award.

The difficulty present in this case is that the SALJ has yet to enter a final Order determining claimant's entitlement to post-award additional medical care. Although the Order directs respondent to pay Dr. Stanton's bill, respondent has voiced no objection to that directive. Likewise, there is no objection to the portion of the Order that awards claimant's counsel fees under K.S.A. 44-536. Accordingly, as to these two undisputed items, both are affirmed.

Respondent's sole focus in this appeal is the SALJ's determination that claimant should be examined by Dr. Lewonowski. Respondent maintains claimant failed to meet his burden of showing his current need for treatment is causally related to the work injury suffered in January 1996, and thus this medical evaluation should not have been ordered.

When the SALJ's Order is read closely, it is clear that respondent's appeal is premature. The SALJ's Order indicates that *if* that physician [Dr. Lewonowski] concludes claimant requires further treatment, then that treatment *should* be authorized by the ALJ. However, the SALJ's Order goes no further. He merely states that further treatment, if recommended, should be authorized. This language certainly constitutes an order for respondent to provide an evaluation, an act which the SALJ is fully empowered to do.

The Legislature did not intend for the Act to be used as a vehicle to obtain advisory opinions or declaratory judgments on matters that are not in actual controversy nor ripe for decision. The Board believes there is presently no ripe controversy, as it relates to further medical treatment, upon which the Board has jurisdiction to act. It would appear from the

plain language set forth in the order that the SALJ retained jurisdiction over this matter pending a report from Dr. Lewonowski regarding claimant's need for further treatment. At that juncture, the SALJ, or the ALJ this case is then assigned to, would be authorized to enter an Order making findings with respect to the causal connection, or lack thereof, of claimant's present complaints and Dr. Lewonowski's treatment recommendations.

As for claimant's counsel's request for attorney's fees associated with the appeal to the Board, those are denied. Any request for fees must first be presented to the ALJ.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Special Administrative Law Judge Marvin Appling dated December 16, 2004, is affirmed in part and dismissed in part with directions to the ALJ to proceed in a manner consistent with the opinions expressed herein.

IT IS SO ORDERED.

Dated this _____ day of February, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Phelps, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
Marvin Appling, Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director